

# **EXHIBIT 7**



Sheppard, Mullin, Richter & Hampton LLP  
333 South Hope Street, 43<sup>rd</sup> Floor  
Los Angeles, California 90071-1422  
213.620.1780 main  
213.620.1398 fax  
www.sheppardmullin.com

213.617.4206 direct  
lcaseria@sheppardmullin.com

December 3, 2018

File Number: 48KZ-266044

**VIA EMAIL**

Derek T. Ho  
Michael N. Nemelka  
Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.  
1615 M Street, N.W., Ste. 400  
Washington, DC 20036-3215  
dho@kellogghansen.com  
mnemelka@kellogghansen.com

Re: *Motor Vehicle Software Corp. v. CDK Global, LLC, et al.*, Case No. 1:18-cv-00865 (N.D. Ill.)

Dear Derek and Mike:

I write this letter on behalf of Defendants regarding certain deficiencies in MVSC's interrogatory responses, document productions and privilege log that Defendants have identified to date.

**1. Interrogatories**

In July 2018, Defendants and MVSC met and conferred regarding MVSC's deficient responses to Defendants' First Set of Interrogatories. In a letter from MVSC dated August 2, 2018, MVSC agreed to amend its responses to Defendants' Interrogatories 8, 14, 15, 18, 22, 26, 30, 31, and 36. It is now four months later, and Defendants have not received any amended responses to these interrogatories.

MVSC should promptly supplement or amend these interrogatory responses.

**2. Documents**

**a. Custodians**

As you know, on May 25, 2018, Defendants proposed document custodians to MVSC. The list included six individual custodians identified by name<sup>1</sup> and five custodians described by

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<sup>1</sup> The six individual custodians are: (1) Don Armstrong; (2) Kelly Kimball; (3) Joseph Nemelka; (4) John Brueggeman; (5) Napa Bulusu; and (6) Matt Armstrong.

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category. Defendants included categorical custodians because, although Plaintiffs already had millions of pages of documents from Defendants from which they could build their lists of proposed custodians, Defendants did not have *any* documents from MVSC and therefore had no ability name every specific individual at MVSC that should be a document custodian. During meet and confers on June 8 and 13, MVSC represented that the six named individuals were sufficient to cover all of the categorical custodians, but refused to provide organizational charts or other documentation to confirm this representation. See July 12, 2018 Letter from Matt Provance to Mike Nemelka. Based on counsel's representations, the parties reached an agreement on MVSC document custodians, limited to the six specific individuals identified by Defendants.

Based on the limited discovery that has occurred to date, it is now apparent that at least two other individuals – Josh Logsdon and Jamison Kingfield – need to be added as document custodians. Contrary to counsel's representations, these two individuals fit the following categorical custodian descriptions requested by Defendants on May 25: (1) "The MVSC employee(s) responsible for negotiating contracts with dealers or integrators"; and (2) "The MVSC employee(s) who is/are the main contact(s) with dealers or integrators."

- **Josh Logsdon.** At his deposition, Joe Nemelka identified Josh Logsdon as an individual who was primarily responsible for interacting with dealers when they had questions relating to DMS. See Nemelka Dep. Tr. at 31. Mr. Nemelka also identified Mr. Logsdon as someone with responsibility for dealing with so-called independent integrators and issues relating to independent integrators. *Id.* at 149. Numerous documents produced by MVSC establish that Mr. Logsdon is a main contact for both dealers and integrators on a day-to-day basis with respect to questions relating to importing data from DMS, and he is referred to as MVSC's data "integration specialist" or "import specialist." See, e.g., MVSC\_MDL\_0013445-55; MVSC\_MDL\_0051361; MVSC\_MDL\_0049666; MVSC\_MDL\_0055834; MVSC\_MDL\_0033148-50; Nemelka Dep. Tr., Exhibits 84, 85.
- **Jamison Kingfield.** Mr. Nemelka also identified Jamison Kingfield as an individual who was "principally" responsible for MVSC's operations in Illinois. See Nemelka Dep. Tr. at 32-33. Documents produced by MVSC reveal that Mr. Kingfield dealt directly with integrators on issues relating to Illinois, and was the main or primary contact with integrators on issues relating to Illinois. See, e.g., MVSC\_MDL\_0030834 (communication with StoneEagle); MVSC\_MDL\_0021815-20 (communications with SIS).

MVSC should add these two individuals as document custodians and promptly produce their responsive materials.

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#### **b. MVSC's Production Date Range**

MVSC's document production contains no emails dated after January 19, 2017. The parties previously met and conferred regarding production date ranges and agreed that MVSC would not need to produce documents pre-dating January 1, 2013, but never discussed or much less agreed that MVSC could withhold emails post-dating January 19, 2017.

MVSC's failure to produce emails post-dating January 19, 2017 has significantly prejudiced Defendants. As you know, MVSC's case centers primarily around the California and Illinois EVR markets. In Illinois, MVSC was not even authorized to provide EVR services until December 29, 2017. See Nemelka Dep. Tr. at 258 and Exhibit 102. Thus, MVSC's failure to produce emails after January 19, 2017 has deprived defendants of critical documents relating to MVSC's process of getting approved to provide EVR services in Illinois. This is just one example of the prejudice to Defendants.

MVSC should promptly produce emails or any other withheld documents post-dating January 19, 2017 (custodial or non-custodial), based on the parties' agreed-upon search terms from January 1, 2013 through the end of 2017.

#### **c. Responsive Documents Located on Google Drive**

MVSC's document production establishes that relevant and responsive documents in MVSC's possession, custody or control were stored in Google Drive. For example, MVSC maintained a "DMS-Reynolds" folder on Google Drive. See, e.g., MVSC\_MDL\_0035458 (3/22/16 email from Andy Padilla: "Does anyone have the step-by-step guide for getting into the Reynolds DMV fee setup screens? If so, please upload them to the DMS-Reynolds folder in Drive."). Another responsive document produced by MVSC contains a link to a document entitled "Reynolds Contract Exp Dates" located in Google Drive, but the link is not accessible and the document was not separately produced. See MVSC\_MDL\_0014265 (11/14/13 email from Andy Padilla to Napa Bulusu).

Please confirm that MVSC's Google Drive was searched for potentially responsive documents and any resulting documents were produced. If that is not the case, MVSC should promptly search for and produce any and all responsive materials located on Google Drive, including materials located in the "DMS-Reynolds" folder, documents located in any other Google Drive folder likely to contain responsive material, including but not limited to folders relating to Reynolds, CDK or CVR, and the document linked to MVSC\_MDL\_0014265, which has not been produced.

### **3. MVSC's Privilege Log**

MVSC's privilege log includes numerous entries that appear to reflect communications with third party non-attorneys or attorneys who were not providing legal advice. Based on MVSC's privilege log, the documents described below may have been inappropriately withheld:

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**Communications with Auto Advisory Services.** Auto Advisory Services is a compliance consulting firm that does not provide legal advice. See <http://www.autoadvisory.com/california-hotline-service/> (“Our Help Desk is staffed with compliance experts and attorneys. If legal advice is needed, please seek professional assistance, as AAS/KPA is not a law firm.”). MVSC’s privilege log contains communications that only appear on the log because they involve an attorney from Auto Advisory Services. There are 117 entries relating to Jonathan Morrison, the former president of Auto Advisory Services. There are 221 entries relating to Rob Cohen, the former chairman and former president of Auto Advisory Services. Although these individuals are attorneys, any advice they provided to MVSC while at Auto Advisory Services was not legal advice, as the disclaimer on Auto Advisory Services’ own website makes clear.

In addition, a 2014 article posted on MVSC’s website identifies Rob Cohen as the individual who initially helped develop MVSC’s EVR solution for California, called DMVDesk, one year after MVSC was founded. See <https://mvscusa.com/wp-content/uploads/San-Fernando-Valley-Business-Journal.pdf>.

MVSC should promptly produce all communications with or regarding Rob Cohen or Jonathan Morrison that have been improperly logged.<sup>2</sup>

**Communications with Weideman Group.** MVSC’s privilege log contains 42 entries relating to Michael Weideman, and 12 entries relating to Jonathan Nelson, both of whom worked at the California lobbying firm Weideman Group. As an initial matter, Jonathan Nelson is not an attorney,<sup>3</sup> so communications with this third party should be produced. Communications with Michael Weideman should be produced to the extent he was not providing legal advice to MVSC. Please confirm that the communications involving Weideman are actually privileged, or promptly produce any improperly logged materials.

\* \* \* \* \*

The deficiencies listed above are the ones that have been identified by Defendants to date and should not be read as a full or exhaustive list of all of MVSC’s discovery deficiencies. Defendants’ review of MVSC’s production continues and we reserve our rights to the extent additional deficiencies are revealed.

Please confirm this week that MVSC will promptly provide amended interrogatory responses and produce the additional documents identified above.

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<sup>2</sup> These individuals might be named in the To, From, CC or BCC fields of MVSC’s privilege log, or, in some cases, their names might only appear in the Description field (for instance, “Confidential communication reflecting the request for legal advice of Cohen, Rob . . .”). Either way, the communications should be produced.

<sup>3</sup> MVSC identified attorneys in its privilege log by placing an asterisk next the names of attorneys. No asterisk appears next to Jonathan Nelson’s name in the MVSC privilege log.

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Sincerely,

A handwritten signature in dark ink, appearing to read "Leo Caseria". The signature is fluid and cursive, with the first name "Leo" and last name "Caseria" clearly distinguishable.

Leo D. Caseria  
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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